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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,536	11/10/2003	Daniel K. Gibby	4263-031577	5139

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EXAMINER

SWENSON, BRIAN L

ART UNIT PAPER NUMBER

3618

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/705,536	Applicant(s) GIBBY, DANIEL K.	
	Examiner Brian Swenson	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8-14,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 3,5,6,10 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8,9,11-14 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

Acknowledgment is made of the amendment filed on 16 February 2006 where:

- Claims 1 and 21 have been amended; and
- Claims 7 and 15-20 have been cancelled.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 4 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,905,855 issued to Troiano et al. in view of U.S. Patent No. 1,873,690 issued to Ward, and in further view of U.S. Patent No. 6,929,142 issued to Gilbert et al.

Troiano et al. teaches in Figures 1-5 and respective portions of the specification of: a container of box shaped proportions for transporting a propane cylinder. The container has a top, having an opening therein, a bottom portion and a plurality of side portions (Figure 1) and one or more handles for gripping the carrier (74).

Troiano et al. discloses the claimed invention except for wheels attached to the bottom of the container.

Ward teaches of a cylinder transporter including teaching of a plurality of wheels (18) located on the bottom of the transporter.

It would have been obvious to one having ordinary skill in the art at the time of invention to provide wheels on the bottom of the transporter, as taught by Ward, in the invention taught by Troiano et al. to allow the transported to be wheeled increasing user convenience.

Troiano et al. as modified by Ward show a pivoting top (30) for container. Troiano et al. as modified by Ward do not show a pair of side flaps to partially open the container.

Gilbert et al. shows a flap structure with a pair of side flaps (68,70; also see embodiment shown in Figures 8 and 9 with flaps 112,114) pivotally connected to a closed position where the center of the container is only partially covered. It would have been obvious to one having ordinary skill in the art at the time of invention to obvious to one having ordinary skill in the art to incorporate the teachings of a pair of side flaps, as taught by Gilbert et al., in the invention taught by Troiano et al. and Ward. One would be motivated to incorporate the side flaps to allow the foam padding (26), shown by Troiano et al. in Figure 1, to be covered. One would be motivated to cover the foam to fix the position of the cylinder within the container to provide the advantage of reducing shifting during transport.

In regards to 12 and 13, Troiano et al. show a strap (44), which is attached to the side of the box shaped container. The fastener for fixing the strap is inherently received within an opening.

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2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Troiano et al. in view Ward and Gilbert et al., and in further view of U.S. Patent No. 5,263,727 issued to Libit et al.

Troiano et al. in view Ward and Gilbert et al. does not teach a telescopic handle.

Telescopic handles are well-known in the vehicle art. Libit et al. teaches of a telescopic handle (300) for a carrier. It would have been obvious to one having ordinary skill in the art at the time of invention to include a telescopic handle, as taught by Libit et al., in the invention taught by Troiano et al. and as modified by Ward and Gilbert et al. to allow the user to move the modified carrier with wheels, without the user needing to bend over, reducing back strain.

3. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Troiano et al. in view Ward and Gilbert et al., and in further view of U.S. Patent No. 4,767,139 issued to Hansing.

Troiano et al. as modified by Ward and Gilbert et al., disclose the claimed invention except for teaching of a fastener for fixing the side flaps.

Hansing teaches of an old and well-known fastener for fixing a component that pivots relative to another component. Hansing teaches of a tension engaged lever (see spring action shown in Figures 7-9) with dowel portion (taken to be element 22) received in portion (34). It would have been obvious to one having ordinary skill in the art at the time of invention to include the well-known fastener, as taught by Hansing, in the invention taught by Troiano et al. and as modified by Ward and Gilbert et al. One

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would be motivated to include a fastener to securely fasten the side flaps to further aid in reducing shifting during transport.

4. Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Troiano et al. in view Ward, Gilbert et al., Hansing and in further view of Libit et al.

Troiano et al. as modified by Ward, Gilbert et al., Hansing (as disclosed above in reference to claims 1 and 8-9) disclose the claimed invention except for teaching of a telescoping handle.

Telescopic handles are well-known in the vehicle art. Libit et al. teaches of a telescopic handle (300) for a carrier. It would have been obvious to one having ordinary skill in the art at the time of invention to include a telescopic handle, as taught by Libit et al., in the invention taught by Troiano et al. and as modified by Ward, Gilbert et al. and Hansing to allow the user to move the modified wheeled carrier, without the user needing to bend over, reducing back strain.

### ***Response to Arguments***

Applicant's arguments filed 16 February 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments, page 6 of the amendment, that the teachings of U.S. Patent No. 6,929,142 issued to Gilbert et al. are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir.

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1992). In this case, Gilbert teaches of a flap structure (elements 68, 70 or 112,114) connected with a hinge structure (elements 72,74 or 116). In this case, the teachings of Gilbert et al. are pertinent to solving the problem of providing a structure that covers the top of a container, while allowing for a partial opening in the top of the container.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

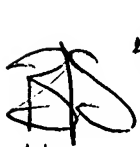
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.

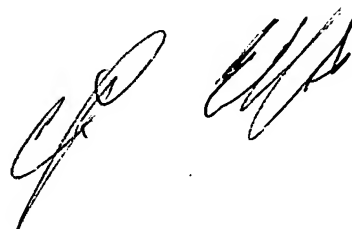
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
bls

Brian Swenson  
Examiner  
Art Unit 3618



CHRISTOPHER P. ELLIS  
SUPERVISORY PATENT EXAMINER  
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